IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 13TH JUNE 2007 / 23RD JYAISHTA 1929

CRL.A.No. 548 of 2007()

SC.269/2004 of CP.77/2003 of JUDL.MAGISTRATE OF FIRST CLASS COURT-I, PATHANAMTHITTA

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APPELLANT:

PURUSHOTHAMAN
C.NO. 876
CENTRAL PRISON
TRIVANDRUM

BY ADV. PURUSHOTHAMAN(APPELLANT)
SRI.R.V.SUJITH KUMAR (STATE BRIEF)

RESPONDENTS:

STATE OF KERALA
REPRESENTED BY THE
PUBLIC PROSECUTOR

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 13/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. Appeal No. 548 OF 2007 C

Dated this the 13th day of June, 2007

J U D G M E N T

In this appeal preferred from the Central Prison, Thiruvananthapuram, the appellant, who was the sole accused in the Sessions Case No.269/2004 on the file of the Additional Sessions Court (Adhoc) Fast Track-II, Pathanamthitta, challenges the conviction entered and the sentence passed against him by the court below for an offence punishable under section 8(2) of the Kerala Abkari Act.

2. The case of the prosecution is that on 26.12.2001 at about 6.45 p.m. at the eastern courtyard of the house of the accused by name Puthenveettil Padinjattathil situated in Ward No.V of Kalanjoor Panchayat the accused was found in possession of, for the purpose of sale, 650 ml. of arrack in a bottle having a capacity of 750 ml and a glass tumbler. The accused has thereby committed an offence punishable under section 8(2) of the Abkari Act.

3. On the accused pleading not guilty to the charge framed against him by the court below for the aforementioned offence, the prosecution was permitted to adduce evidence in

support of its case. The prosecution altogether examined four witnesses as PWs 1 to 4 and got marked nine documents as Exhibits P1 to P9 and two material objects as MOs 1 and 2.

4. After the close of the prosecution evidence, the accused was questioned under section 313(1)(b) Cr.P.C. with regard to the incriminating circumstances appearing against him in the evidence for the prosecution. He denied those circumstances and maintained his innocence. He stated before court that he was falsely implicated in the case.

5. Since the court below did not consider this case to be a fit case for recording an order of acquittal under section 232 Cr.P.C., the appellant was called upon to enter on his defence and to adduce any evidence which he might have in support thereof. He did not adduce any defence evidence.

6. The learned Additional Sessions Judge, after trial, as per judgment dated 7.10.2006 found the appellant guilty of the offence charged against him and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs.1 lakh and on default to pay the fine, to suffer rigorous imprisonment for six months more. It is the said judgment which is assailed in this

appeal.

7. I heard Advocate Sri. R.V. Sujith Kumar, the learned counsel, who defended the appellant on State Brief and Advocate Sri. K.S. Sivakumar, the learned Public Prosecutor, who defended the State.

8. The only point which arises for consideration in this appeal is as to whether the conviction entered and the sentence passed against the appellant are sustainable or not.

The point:

9. PWs 1 and 2 are independent witnesses, who are signatories to Ext.P1 contemporaneous mahazar prepared by the detecting officer. Eventhough both of them admitted their signatures in Ext.P1 mahazar as also on the labels affixed on the properties, both of them turned hostile to the prosecution. PW3 is the Police Constable, who accompanied the detecting officer, namely PW4. PW4 was the Sub Inspector of Koodal Police Station, who detected the offence and conducted the investigation.

10. The learned counsel appearing for the appellant made the following submissions before me in support of his fervent plea for acquittal of the appellant:-

PWs 1 and 2, who are the only independent witnesses to the alleged search, seizure and arrest effected by PW4, turned hostile to the prosecution. The only other witnesses are official witnesses, who will naturally support the prosecution case only. PW4, who is none other than the officer who detected the offence, had himself conducted the investigation of the case. This was illegal. According to the prosecution, the appellant was making retail sale of illicit arrack. But nothing has been seized by way of sale proceeds. The appellant was falsely implicated by the police and the conviction entered by the court below cannot be supported.

11. I am afraid that I cannot agree with the above submissions. It is true that PWs 1 and 2, who are the independent witnesses to the search, seizure and arrest, turned disloyal to the prosecution. Such witnesses are not unfamiliar to courts. Both these witnesses were turning out to be cunning performers in the witness box evidently to salvage the accused from his criminal liability. The testimony of PWs 3 and 4 has been credible enough to accept the prosecution case that at about 6.45 p.m. on 26.12.2001 the appellant was found in possession of a bottle

containing some contraband substance along with a glass tumbler. The experienced olfactory and gustatory senses of the detecting officer informed him that the substance was illicit arrack. May be, the accused had only started the illicit retail sale which explains the non-recovery of any amount by way of sale proceeds. The testimony of PWs 3 and 4 goes to show that after apprehending the appellant, the bottle of arrack as well as the glass tumbler found in his possession were seized. Thereafter, PW4 took a sample measuring 150 ml. from the seized bottle in another bottle and after sealing the said sample bottle it was seized under Ext.P1 mahazar. The accused as well as the contraband liquor together with the sample and the seized documents were then taken to the Koodal Police Station from where the case was registered as Crime No.188/2001.

12. Ext.P6 is the property list, which shows that on the very next day itself, i.e. on 27.12.2001, the 750 ml. bottle containing 500 ml. of the alleged illicit arrack, the sealed sample bottle containing 150 ml. of the said liquid and the glass tumbler having a capacity of 125 ml. were produced before the Magistrate, who received the same as TR.346/2001. On 27.12.2001 itself, Ext.P7

forwarding note was filed before court requesting to despatch the sample bottle to the Chemical Examiner. Ext.P8 certificate of chemical analysis shows that the sample bottle containing 150 ml. of the liquid was despatched to the Chemical Examiner as per letter dated 1.1.2002 of the Magistrate and that the seal on the sample was in tact and tallied with the specimen seal which was separately sent. Ext.P8 certificate further shows that the sample on analysis was found to contain 20.86% by volume of Ethyl Alcohol.

13. The prosecution has thus succeeded in establishing that the accused was on 26.12.2001 found in possession of 650 ml. of illicit arrack as confirmed by Ext.P8 certificate of analysis. Since the possession of illicit arrack was in contravention of the prohibition under section 8(1) of the Abkari Act, the accused was liable to be convicted under section 8(2) of the Act and was, therefore, rightly found guilty by the court below. I see no infirmity in the conviction recorded by the court below.

14. The sentence imposed on the appellant also cannot be said to be excessive. Having regard to the object of the legislation, arrack in any form has been banned in this State with

effect from 3.6.1997. This killer brew has broken several families. It was after taking stock of the deleterious effect of this liquor on the Society that the State legislature intervened by imposing a total ban on arrack. Penal servitude by way of incarceration alone can curb the lucre behind the manufacture and trafficking of this brew. Hence, I do not find any illegality in the sentence imposed on the appellant as well.

In the result, this Criminal Appeal fails and is accordingly dismissed confirming the conviction entered and the sentence passed against the appellant.

(V. RAMKUMAR, JUDGE)

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V. RAMKUMAR, J.

Crl. Appeal No. 107 OF 2007 C

Dated this the 11th day of June, 2007

GIST OF THE J U D G M E N T

(V. RAMKUMAR, JUDGE)

V. RAMKUMAR, J.

Crl. Appeal No. 548 OF 2007 C

J U D G M E N T

13th June, 2007